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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,708	01/26/2000	Michael Aven	33546-01	8959

28425 7590 12/28/2001

INTELLECUTAL PROPERTY DEPARTMENT  
BASF CORPORATION  
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PRINCETON, NJ 08540

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/28/2001

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/491,708

Applicant(s)

Aven

Examiner

Alton Pryor

Art Unit

1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Nov 16, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-8, 11, 12, and 15-17 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8, 11, 12, and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Applicant's arguments filed 11/16/01 have been fully considered but they are not persuasive.

Claim Rejection under 35 U.S.C. 103(a) over Valcke will be maintained in light of amendment filed 11/16/01 for reasons on record and reasons as follows.

A. Applicant argues that Valcke does not teach the concentrate having a nonionic dispersant or a combination of an aprotic solvent and a nonpolar solvent.

B. Applicant argues there exist no direction in Valcke for one having ordinary skill to choose the specific ingredients in the instant formulation.

C. Applicant argues that Valcke does not teach a composition comprising an alkoxyated alcohol with instant number of carbon atoms or the instant amounts and ratios of components. Applicant states that the number of carbon atoms in the alkoxyated alcohol has an effect on the solubility of other components in the formulation.

1. Examiner takes the view that the claimed composition / concentrate does not require a nonionic dispersant or a nonpolar solvent. Note that claim 1 states that the composition / concentrate comprises **up to** a specified concentration limit which means that the concentrate can have zero content in nonionic dispersant and nonpolar solvent.

2. Examiner argues that applicant does not claim specific ingredients but rather claims broad classes / groups of ingredients (solvents, dispersants,azole compounds with hydroxy group).

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3. Examiner takes the view that applicant does not provide a showing of unexpected data for instant amounts / ratios of ingredients. Examiner also argues that applicant does not provide a showing of unexpected data with respect to the solubility of the azole as a function of the carbon chain of the alkoxyated alcohol. In the absence of unexpected data it would have been obvious to one having ordinary skill to determined the optimum amounts / ratios and the number of carbon atoms in the alkoxyated alcohol chain through routine experimentation.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

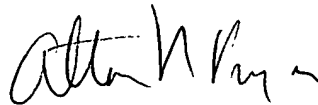
***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read "Alton Pryor", with a stylized flourish at the end.

Alton Pryor

Primary Examiner, AU 1616

12/22/01